

EXHIBIT 53

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Boston, MA

June 14, 2007

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UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

Civil Action No. 03-CV-11865-PBS

- - - - - x

THE COMMONWEALTH OF MASSACHUSETTS,

Plaintiff,

v.

MYLAN LABORATORIES, INC.; BARR LABORATORIES, INC.;
DURAMED PHARMACEUTICALS, INC.; IVAX CORPORATION;
WARRICK PHARMACEUTICALS CORPORATION; WATSON
PHARMACEUTICALS, INC.; SCHEIN PHARMACEUTICAL; INC.;
TEVA PHARMACEUTICALS USA, INC.; PAR PHARMACEUTICAL,
INC.; DEY, INC.; ETHEX CORPORATION; PUREPAC
PHARMACEUTICAL CO.; and ROXANE LABORATORIES, INC.,
Defendants.

- - - - - x

VIDEOTAPED DEPOSITION OF PAUL L. JEFFREY, Pharm.D.

Thursday, June 14, 2007 9:50 a.m. to 4:26 p.m.

Ropes & Gray,

One International Place, Boston, Massachusetts

Reporter: Lisa A. Moreira, RDR/CRR

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1 qualitative nature to that, so --

2 Q. Right.

3 A. -- at first I believed it to be, you
4 know, competent. I think that my perspective on
5 the reimbursement for brands and generics changed
6 over time.

7 Q. And as it changed, did it affect your
8 view of the competence of your predecessors?

9 A. No.

10 Q. Dr. Jeffrey, what are the goals of the
11 Massachusetts Medicaid program for
12 pharmaceuticals?

13 A. To provide medically necessary drug
14 therapy to the members of the MassHealth program.

15 Q. And in order to do that, am I correct
16 that one goal of the program is to ensure that
17 Medicare- eligible individuals have access to
18 pharmaceuticals?

19 A. Medicaid-eligible.

20 Q. Excuse me.

21 A. Yes.

22 MR. MONTGOMERY: Strike that. Don't

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1 let that appear in the transcript.

2 THE WITNESS: I do it myself.

3 A. So yes, that would be an accurate
4 statement. That's a requirement of my position.
5 It is expected of my position to do that.

6 Q. And in order to assure access, you have
7 to induce pharmacies to voluntarily participate
8 in the program, correct?

9 A. Yes.

10 Q. And am I correct that another goal of
11 the program is to make prudent use of taxpayer
12 dollars in providing this benefit?

13 A. Yes.

14 Q. And during the course of your tenure at
15 MassHealth have you been concerned from time to
16 time about your ability to maintain adequate
17 access to pharmaceuticals for Medicaid-eligible
18 individuals?

19 A. Yes.

20 Q. And can you tell me, just generally,
21 about the nature of the concern that you have
22 had.

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1 A. I know it to be a responsibility of the
2 program management, so it's one of the things I
3 have to keep my eye on continuously, so it's
4 always one of the parameters I would evaluate
5 when making a decision that would affect our
6 policies, would it affect access.

7 Q. And in making that evaluation, what do
8 you look at?

9 A. Well, you know, specifically it is, are
10 there enough pharmacies to provide the services
11 required of the citizens of the Commonwealth who
12 are Medicaid beneficiaries?

13 Q. And has it been your view that in order
14 to maintain an adequate stable of pharmacies,
15 that they need to make a reasonable profit on the
16 service that they provide to the Medicaid
17 program?

18 A. Yes.

19 Q. And how do you stay on top of the
20 reasonableness of the profit?

21 A. The indicator that's of -- the most
22 important indicator is, do we have pharmacies to

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1 thinking than I would at any other time for that
2 -- to test that measure; talk with pharmacy
3 providers, get feedback, assess the situation,
4 and then decide to proceed or not.

5 Q. Did you understand that in using a 130
6 percent factor, that you were probably building
7 in a profit margin into the reimbursement rate
8 for pharmacies?

9 A. Yes.

10 Q. And am I correct that you thought that
11 was an appropriate thing to do in order to induce
12 pharmacies to continue to participate?

13 A. Yes.

14 Q. And to what extent, since you
15 implemented the revised program, does MassHealth
16 reimburse generic drugs on the basis of MACs?

17 A. I figured you'd ask that, and I don't
18 remember the number.

19 Q. Is it something that you monitor?

20 A. We do, yes.

21 Q. And do you report on it from time to
22 time?

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1 A. In the Medicaid program, it was about
2 47.5 or 48 percent.

3 Q. And after you eliminated the dispense
4 as written exception, what happened to the
5 generic utilization?

6 A. It went up. I don't remember. We did
7 numerous things at the same time.

8 I do know the answer -- I have the
9 answer to that. I don't remember it.

10 Q. Do you know if it went up
11 significantly?

12 A. Yes.

13 Q. And do you know if prior to your
14 arrival at MassHealth there had been any
15 consideration given to eliminating the dispense
16 as written exception?

17 A. I don't know that.

18 Q. Did anybody ever tell you that that had
19 been considered?

20 A. I don't recall that. I just don't
21 know. I want to take -- that was my idea.

22 No, I just don't recall. It seems like

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1 something that would have been discussed. I'll
2 bet -- I wouldn't be surprised if Mr. Gilmore
3 didn't have -- you know, if he had a laundry list
4 of things we could do, it's likely that would
5 have been on it, but I don't remember that
6 specifically.

7 Q. Now, returning to the changes made in
8 2002, after the report to the legislature,
9 Exhibit Jeffrey 003, what happened next in the
10 sequence of efforts to change the program?

11 A. Well, that recommendation went into
12 effect on or about the date -- I think it was
13 November '01 or '02, I'm not sure. I think
14 that's what it said in there. And it didn't last
15 long, but --

16 Q. And why didn't it last long?

17 A. There were further demands on the
18 MassHealth budget so --

19 Q. Demands from who?

20 A. The legislature, the governor. So we
21 had to continue to find additional savings, and
22 the reimbursement formula that went into effect

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1 was once again on the table for revision, and it
2 was revised in that next legislative cycle.

3 Q. In 2003?

4 A. Yes.

5 Q. And what was that revision?

6 A. That brought the reimbursement rate
7 down to an estimated acquisition cost of WAC plus
8 5 percent plus a \$3 dispensing fee for all
9 prescriptions.

10 Q. And in the 2003 time frame did you make
11 any recommendations for changes?

12 A. I'm sure I did. I know I tried to
13 preserve the differential dispensing fee for
14 generic drugs, but I can't remember.

15 As I said previously, we often made
16 several types of recommendations, Plan A, B, or
17 C, and --

18 Q. Do you recall talking to anybody about
19 the differential dispensing fee?

20 A. Oh, I know I did.

21 Q. Who did you talk to?

22 A. I'm trying to -- the who, I'm not sure.

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1 Certainly to my leadership, and I don't know if -
2 - I don't know how high up I got with that, so to
3 speak, so I don't know if I -- I'm trying to
4 recall, was Commissioner Warring still in her
5 seat at that time? You know, I don't remember who
6 changed what when.

7 I'm pretty sure that Linda Ruthardt was
8 no longer the commissioner of Division of
9 Healthcare Finance and Policy. I'm pretty sure
10 Steve was the acting commissioner, and so -- and
11 certainly to my boss at the time. I tried to
12 make a recommendation to preserve that
13 differential dispensing fee.

14 I wasn't -- I didn't play it that close
15 to the vest. I mean, that was my position.

16 Q. And could you tell us the basis for
17 your position as you articulated it?

18 A. Well, during that period of time the
19 generic dispensing rate went up, so to the extent
20 that that might have been attributable and likely
21 was attributable to greater participation by
22 pharmacists and in moving prescribing to a